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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1992

Addendum

RUSSIAN FEDERATION*

[17 January 1996]

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* The initial report, submitted by the Government of the Union of Soviet Socialist Republics, is contained in document CAT/C/5/Add.11; for its consideration by the Committee, see document CAT/C/SR.28 and 29 and the Official Records of the General Assembly, Forty-fifth session, Supplement No. 44 (A/45/44), paras. 115-149.

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I. INTRODUCTION

1. This report is submitted under article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and was drafted in accordance with the general guidelines concerning the form and contents of periodic reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/14).

2. The report covers the period 1990-1995 and contains a description of developments since the submission of the initial report in 1988 (CAT/C/5/Add.11).

II. INFORMATION RELATING TO EACH ARTICLE OF PART I OF THE CONVENTION

Article 1

3. Article 1 of the Convention contains a definition of torture. Neither the Constitution of the Russian Federation nor other normative instruments provide a definition of this term. However, for an understanding of the importance of this conventional norm for the Russian Federation it is essential to quote article 15, paragraph 4, of the Russian Constitution:

> "Universally recognized principles and norms of international law as well as international agreements of the Russian Federation shall be an integral part of its legal system. If an international agreement of the Russian Federation establishes rules which differ from those stipulated by law, then the rules of the international agreement shall apply."

4. The inclusion of this norm in the Constitution allows for direct operation and application of the norms of international law by the authorities, including judges. Interested natural or juridical persons may refer directly to the norms of international law in the resolution of disputes between them and with State bodies, enterprises, institutions or organizations.

5. In accordance with article 15, paragraph 4, of the Constitution of the Russian Federation, the rules established by international agreements take precedence over rules of internal laws which conflict with them. This means that in the event of a conflict between an international treaty and a legislative act, the law enforcement organs of the Russian Federation must be guided by the treaty norms. The treaty has priority over any federal law or law of a subject of the Federation, whether passed before or after the conclusion of the treaty.

6. It follows from the above that the definition of the term "torture" in article 1, paragraph 1, of the Convention may be used by the authorities of the Russian Federation, including judges, in the settlement of disputes relating to this matter.

7. As regards article 1, paragraph 2, of the Convention, it should be noted that the Russian Federation is not a party to any other international instrument and has no national legislation containing provisions of wider application than the norms of the present Convention.

Article 2

8. Since the submission of the initial report, the Russian Federation has passed a whole series of new acts and other regulatory instruments containing norms aimed at further implementation of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. Reference should be made first of all to the Constitution of the Russian Federation, which was adopted by a referendum on 12 December 1993. Under article 2 of the Constitution, "Man and his rights and freedoms shall be the supreme value. The recognition, observance and protection of human and civil rights and freedoms shall be an obligation of the State". Chapter 2 of the Constitution is entirely devoted to human and civil rights and freedoms. Of direct relevance to the Convention against Torture is article 21 of this chapter, which reads:

> "1. Human dignity shall be protected by the State. Nothing may serve as a basis for its derogation.
>
> "2. No one shall be subjected to torture, violence or other cruel or degrading treatment or punishment. No one may be subjected to medical, scientific or other experiments without voluntary consent."

10. The regulatory instruments adopted between 1990 and 1995 containing a number of important provisions aimed at further implementation of the norms of the Convention also include: acts on the rehabilitation of victims of political repression (revised 1994), on the Office of the Procurator of the Russian Federation (1992), on the militia (1993), on institutions and organs applying criminal punishment in the form of deprivation of liberty (1993), on states of emergency (1991), on psychiatric care and safeguards of citizens' rights during such care (1992), on complaints to a court regarding actions or decisions infringing citizens' rights and freedoms (1993), on investigative operations (1995) and on the detention of persons suspected or accused of having committed offences (1995); the Declaration on Human and Civil Rights and Freedoms (1992); the decree of the State Duma declaring an amnesty in connection with the fiftieth anniversary of victory in the Great Patriotic War 1941-1945 (1995); regulations approved by the Government of the Russian Federation on 3 May 1994 concerning the procedure for granting privileges to rehabilitated persons and persons recognized as having undergone political repression; the decree of the Government of the Russian Federation dated 30 December 1993 concerning priority measures for the reinforcement in 1994-1995 of the material and technical infrastructure of remand centres and prisons of the Ministry of Internal Affairs of the Russian Federation and strengthening of the social protection of staff in these institutions; and the decree of the Government of the Russian Federation dated 3 November 1994 concerning the federal programme for building and reconstruction of remand centres and prisons of the Ministry of Internal Affairs of the Russian Federation, and building of accommodation for personnel of these institutions in the period up to the year 2000.

11. In addition, amendments and supplements were introduced during this period to the already existing Correctional Labour Code, Criminal Code and Code of Criminal Procedure of the Russian Federation.

12. The draft texts of a new criminal code, code of criminal procedure and code governing the penal system have now been prepared and have gone through a number of readings in the Federal Assembly.

13. Under article 56, paragraph 3, of the Constitution of the Russian Federation, the rights and freedoms specified in a number of articles of the Constitution, including the above-mentioned article 21, may not be restricted.

14. A similar norm is also contained in the State of Emergency Act, article 27 of which stipulates that "the introduction of a state of emergency may not serve as a justification for the use of torture or cruel, inhuman or degrading treatment or punishment ... within the meaning ... accepted in the International Covenant on Civil and Political Rights".

15. An examination by the procurator's office of cases of human rights violations during the state of emergency in October 1993 in Moscow recorded abuses by representatives of bodies enforcing the state of emergency, together with breaches of the law and cruel and degrading treatment. On the instructions of the President of the Russian Federation, an investigation was made into instances of abuse of authority at that time by staff of the Ministry of Internal Affairs, Ministry of Security and Ministry of Defence; all acts issued by the Government of Moscow during that period were also examined to determine their consistency with the legislation of the Russian Federation. According to information from the Moscow Procurator's Office, 115 communications were received from citizens and organizations alleging unlawful actions by staff of internal affairs organs during the state of emergency, and criminal proceedings were instituted in 36 cases. With the adoption of the amnesty decrees by the State Duma in the spring of 1994, these cases fell within the category of those to be discontinued and proceedings relating thereto were terminated.

16. Article 7 of the Security Act of 5 March 1992 states that "in maintaining security, citizens' rights and freedoms may not be restricted except in the cases specifically provided for by law ... Officials exceeding their powers in the course of activities to maintain security shall bear responsibility, in accordance with the law".

17. Any order from a superior officer or a public authority which clearly goes beyond the limits of the rights and powers vested in them by law and causes substantial harm to State or social interests or to citizens' legally protected rights and interests is to be treated as excessive use of authority or official powers and constitutes an act punishable under criminal law. The present Criminal Code of the Russian Federation has a corresponding article 171 "Exceeding of authority or official powers":

> "The exceeding of authority or official powers, that is, the intentional commission by an official of actions clearly going beyond the limits of rights and powers granted to him by law, thereby causing substantial harm to State or social interests or to legally protected rights and interests of citizens, shall be punishable by deprivation of liberty for a term of up to three years, or by correctional tasks for a term of up to two years, or by dismissal from office."

18. "The exceeding of authority or official powers, if accompanied by force, by the use of a weapon or by actions which torment the victim and offend his personal dignity, shall be punishable by deprivation of liberty for a term of up to 10 years."

19. After the events of August 1991, the text of the general military regulations was supplemented by the following wording: "A commanding officer issuing an order shall bear statutory responsibility for its lawfulness". A provision of this kind does, of course, call for better legal training of the command staff of the Russian Armed Forces at all levels.

Article 3

20. Under article 61, paragraph 1, of the Constitution of the Russian Federation, "a citizen of the Russian Federation may not be deported from the Russian Federation or extradited to another State".

21. Article 63 of the Constitution reads:

> "1. The Russian Federation shall grant political asylum to foreign citizens and stateless persons in accordance with the universally recognized norms of international law.
>
> "2. In the Russian Federation persons who are persecuted for their political convictions or for actions (or inaction) not recognized as a crime in the Russian Federation may not be extradited to other States. The extradition of persons accused of a crime, as well as the surrender of convicts to serve sentence in other States, shall be carried out on the basis of federal law or an international treaty of the Russian Federation."

22. The Russian Federation is guided by the provisions of General Assembly resolution 45/116, adopted without a vote on 14 December 1990 at the Assembly's forty-fifth session, which contains a Model Treaty on Extradition. One of the grounds for refusal to extradite persons who have committed offences is stated in this Treaty as follows: if the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in article 14 of the International Covenant on Civil and Political Rights, then the person may not be extradited.

Article 4

23. The criminal law of the Russian Federation contains no norms directly providing for liability for torture. However, the Criminal Code of the Russian Federation does contemplate punishment for the following offences: ill-treatment (art. 113), abduction (art. 125.1), unlawful deprivation of liberty (art. 126), hostage-taking (art. 126.1), unlawful placement in a psychiatric hospital (art. 126.2), abuse of authority or official position (art. 170), coercion to give evidence (art. 179) and coercion of a witness or victim to give false evidence or of an expert to give a false conclusion (art. 183).

24. In general, quite severe punishment is provided for such offences. For example, coercion to give evidence by means of threats or other illegal actions by the person carrying out an inquiry or preliminary investigation is punishable by deprivation of liberty for a period of 3 to 10 years where such an act is combined with the use of violence or humiliation of the person being interrogated (art. 179 of the Criminal Code) and the exceeding of authority or official powers, if accompanied by force, by the use of a weapon or by actions which torment the victim and offend his personal dignity, is punishable by deprivation of liberty for a period of up to 10 years (art. 171 of the Criminal Code).

25. Under article 17 of the Criminal Code ("Complicity"), accomplices in an offence are, together with the principal offenders, recognized as organizers, inciters and accessories. The extent and nature of the participation of each of the accomplices in the offence must be considered by the court when passing sentence.

Article 5

26. Under article 4 of the present Criminal Code of the Russian Federation, all persons who have committed offences in the territory of the Russian Federation are to be held liable under Russian law.

27. In the event of the commission of an offence in the territory of the Russian Federation by diplomatic representatives of foreign States or other citizens who under existing laws or international treaties are not subject to the criminal jurisdiction of the Russian courts, the question of their criminal responsibility is decided by diplomatic means.

28. Although there is no direct reference thereto in domestic legislation, the territory of the Russian Federation is regarded, under the universally recognized norms and principles of international law, as also including naval vessels under its flag or with its markings on the high seas or in the territorial waters or a port of a foreign State; non-naval sea-going or river vessels of the Russian Federation under its flag on the high seas; and aircraft with the markings of the Russian Federation in the airspace of a foreign State.

29. Under article 5 of the Criminal Code of the Russian Federation, if citizens of the Russian Federation have been sentenced outside the State of their citizenship (in the place where they committed an offence), a court of the Russian Federation may mitigate their punishment or provide full relief therefrom.

30. In existing Russian law there is no general norm establishing the criminal jurisdiction of the Russian Federation in cases where offences are committed abroad against the life, health, honour, dignity and other rights and legal interests of Russian citizens (including the offences referred to in art. 4 of the Convention).

31. In accordance with the above-mentioned article 5 of the present Criminal Code, foreign citizens who have committed offences outside the boundaries of the Russian Federation may be held liable under Russian criminal law in the

cases provided for by international treaties. Accordingly, where a person who is alleged to have committed one of the offences referred to in article 4 of the Convention and who is present in Russian territory cannot be extradited to any of the States mentioned in article 5, paragraph 1, of the Convention, that person will be proceeded against under Russian criminal law.

Article 6

32. Proceedings in criminal cases in the Russian Federation are conducted in accordance with the criminal procedure law, which in recent years has witnessed considerable changes and additions that have substantially extended the procedural rights of citizens, guaranteeing the protection of their rights and inviolability of the person.

33. The main instrument regulating the above matters is the present Code of Criminal Procedure of the Russian Federation.

34. Under article 11 of this Code, "no one may be arrested except on the basis of a judicial decision or with the approval of a procurator". An arrested person has the right to contest and have a court verify the legality and grounds of his detention. A judge's decision to release the person from custody after such judicial verification must be given immediate effect.

35. A procurator must immediately release any person unlawfully deprived of liberty or held in detention beyond the time provided for by law or by a court judgement.

36. Under article 19 of the Code of Criminal Procedure, any suspect or accused person must be guaranteed the right to a defence.

37. Article 47 of the Code of Criminal Procedure regulates in detail matters relating to the participation of defence counsel in criminal proceedings: defence counsel is allowed to participate in a case from the time of accusation or, if a person suspected of an offence is detained or kept in custody as a measure of restraint prior to accusation, from the time that the person is given formal notice of his detention or of the decision to apply such a measure of restraint.

38. On 21 June 1995 the State Duma passed a federal Act on the detention of persons suspected or accused of having committed offences. The purpose of this Act, according to article 1, is to "regulate the procedure and define the conditions for the detention of persons suspected or accused of having committed offences, and safeguards of their rights and legal interests".

39. Of particular importance is article 4 of the Act, which states that "detention shall be effected in accordance with the principles of legality, equality of all citizens before the law, humanity and respect for human dignity, and in accordance with the Constitution of the Russian Federation, the principles and norms international law and international agreements of the Russian Federation, and shall not be accompanied by torture or other actions intended to cause physical or psychological suffering to persons who are suspected or accused of having committed offences and who are in custody".

40. Chapter II of the new Act is entirely devoted to the rights of suspects and accused persons and their exercise. It for the first time reflects a series of rights of such persons that had not previously been incorporated into Russian law. These rights include the right to obtain information from the administration of the place of detention concerning the regulations, disciplinary requirements and procedure for making statements and complaints; the right to personal safety; the right to civil treatment by staff of the place of detention; and the right to observe religious practices and keep with them religious articles, etc.

41. Suspects and accused persons have been given broader rights to correspond with and meet their relatives and other persons, to receive parcels and packages and to obtain food and basic necessities.

42. The right of suspects and accused persons to meet defence counsel, relatives and other persons is regulated in detail by article 18 of the Act, which stipulates that from the moment of detention, suspects and accused persons shall be allowed to meet defence counsel in private. There is no limit on the number or duration of the meetings. Meetings are allowed with a lawyer participating in the case as defence counsel, upon presentation by the lawyer of an order for legal consultation; with a representative of a trade union or other social organization acting as defence counsel, upon presentation of the requisite minute; or with any other individual participating in the case as defence counsel, upon presentation of a court warrant or order and a document attesting to the identity of the person concerned.

43. Meetings between a suspect or accused person and his defence counsel may take place under conditions whereby they can be seen but not heard by a staff member of the law enforcement authorities.

44. With the written permission of the individual or organ conducting the criminal proceedings, the suspect or accused person may be allowed not more than two meetings a month, each lasting up to three hours, with relatives or other persons.

45. Meetings with relatives or other persons are to be supervised by staff of the place of detention and will be cut short if any attempt is made to pass to the suspect or accused person prohibited articles, substances or foodstuffs or information which might hinder the establishment of the truth in the criminal case or aid the commission of an offence.

46. Attention should also be drawn to article 27, which states that suspects and accused persons may be assigned to work within the grounds of remand centres or prisons only under appropriate conditions and only if they so wish, and in such cases they are "entitled to ... suitable remuneration" for their labour (art. 27, para. 2, of the Act).

47. For failing to comply with established obligations suspects and accused persons may be sanctioned by a reprimand or by placement in a punishment cell or in solitary confinement under guard. The administering of sanctions is regulated in detail by article 39 of the Act, which allows for appeal against a sanction to a higher official, a procurator or a court, while article 40

contains an exhaustive list of acts or omissions for which suspects or accused persons may be placed in solitary confinement or in a punishment cell. Placing such persons in solitary confinement or in a punishment cell for any acts or omissions other than those enumerated in article 40 of the Act is thus unlawful and incurs the responsibility of those guilty thereof.

48. There are very detailed regulations concerning the use of physical force, special means, gas weapons and firearms in places of detention. It should be emphasized that the list of cases in which the use of physical force, special means, gas weapons or firearms by staff of places of detention or other staff of internal affairs organs assigned to maintain order is also of an exhaustive character, which means that a broader interpretation of this provision is not permissible and responsibility is borne by persons guilty of performing such actions on any grounds other than those enumerated in articles 44, 45, 46 and 47 of the Act.

49. An important innovation is also the provision whereby suspects and accused persons are released immediately if the legally established term of their detention has expired.

50. Since a number of questions with regard to the strengthening of material and technical infrastructure remain unresolved, some norms have had to be temporarily waived. In particular, the application of a number of provisions of the Act, chiefly concerning the availability of individual sleeping accommodation for all suspects and accused persons without exception and increasing the health norms regarding floor space in a cell to four square metres per person (instead of two and a half square metres as at present), is expected to be deferred until 1 January 1998.

51. In this connection, it should be noted that overcrowding in prisons and temporary detention facilities was the main target of the criticism by Mr. Nigel Rodley, the Special Rapporteur on torture of the Commission on Human Rights, during his visit to the Russian Federation, and was also the reason why the conditions under which suspects and accused persons are held in places of detention were described as "torturous" in his report on the visit (E/CN.4/1995/34/Add.1).

52. In response to the criticism directed against it, the Russian Federation has taken a number of measures to humanize conditions in places of detention. One such measure was the adoption of the above-mentioned Federal Act on the detention of persons suspected or accused of having committed offences.

53. Another step was the adoption in April 1995 by the State Duma of a decree declaring an amnesty in connection with the fiftieth anniversary of victory in the Great Patriotic War 1941-1945. The decree amnesties some 300,000 people who have not committed serious crimes. It is worth noting that, in respect of persons to whom this amnesty decree is applicable, proceedings will be discontinued in all cases under investigation and cases not yet heard by the courts.

54. In pursuance of the reform of the Russian penitentiary system, particular attention is being paid to improving the situation in remand centres. This calls for a considerable input of material resources and stable funding. Over

the past two years a number of decrees have been issued on this subject, including the decree of 30 December 1993 on priority measures for the reinforcement in 1994-1995 of the material and technical infrastructure of remand centres and prisons of the Ministry of Internal Affairs of the Russian Federation and strengthening of the social protection of staff in these institutions; and the decree of 8 November 1994 on the federal programme for building and reconstruction of remand centres and prisons of the Ministry of Internal Affairs of the Russian Federation, and building of accommodation for personnel of these institutions in the period up to the year 2000.

55. Already in the course of 1994 the implementation of these important instruments had made it possible to increase the capacity of remand centres by 6,070 places, including 4,570 places obtained by the creation of new facilities. In all it is planned to increase the number of places in remand centres and prisons by 113,200, including 33,600 through new construction and 29,700 through reconstruction of existing facilities.

56. Among other causes of overcrowding in remand centres and prisons, mention is rightly made in the report of the Special Rapporteur, of insufficiently justified resort in some cases by enquiry agencies and investigators and by the courts to restraint in the form of detention, and of delays in the investigation and trial of criminal cases.

57. The critical comments and conclusions of the Special Rapporteur, including those expressed during his stay in Moscow, were brought to the attention of the Ministry of Justice, the Supreme Court and the Office of the Procurator-General of the Russian Federation. In the light of these observations the Ministry of Justice issued a country-wide directive to accelerate the court examination of criminal cases. In a decision taken in plenary session, the Supreme Court on 29 September 1994 also expressed concern at existing deficiencies in judicial review of the legality of and justification for the use by organs of enquiry, investigators and prosecutors of arrest as a measure of restraint, as well as the extension periods of detention, and identified measures to remedy those deficiencies.

58. In addition, a decision was taken in agreement with the State bodies concerned to transfer some convicted persons whose sentences had not come into legal effect from over crowded remand centres and prisons to temporary remand centres established in the grounds of some colonies, thereby making it possible to improve their conditions of detention. In the first quarter of 1995, some 12,300 such convicted persons were transferred.

59. The Ministry of Internal Affairs of the Russian Federation is now studying jointly with the Ministry of Health and the Medical Industry the possibility of transferring from a number of remand centres the in-patient forensic psychiatry facilities, which are located in their grounds occupying about 2,000 square metres of the total area.

60. A major role in maintaining proper order in detention facilities falls to the personnel of remand centres and prisons. In overcrowded institutions the burden on the staff is two or three times as heavy, and the material incentives and social protection provided with the job do not compensate for the physical and mental strain. The ratio of personnel to detainees is 1:6.

With a view to regulating the situation, the Government of the Russian Federation in August 1994 issued a decree establishing norms for the staffing of institutions applying criminal penalties in the form of deprivation of liberty with special conditions of economic activity, and also of the remand centres of the Ministry of Internal Affairs of the Russian Federation, under which it is planned to raise the staffing requirement in remand centres and prisons to 25 per cent (i.e. a staff/inmate ratio of 1:4) by the year 2000.

61. Surveillance by procurators in recent years has shown that, in practice, infringements by law-enforcement bodies of the rights of citizens, utilization of illegal methods of investigation, and unwarranted detentions and arrests have not yet been eliminated.

62. Some 4,780 individuals were released from temporary detention centres in 1994, upon non-confirmation of suspicions, and that figure represents 0.8 per cent of the total number of individuals placed in such centres on suspicion of having committed offences. During the past year, preliminary investigation agencies and the courts released 2,035 individuals, including 73 juveniles, from custody when investigations were terminated upon their being exonerated.

63. In the case of law-enforcement officials responsible for infringements of the law or offences in the course of their duties, sanctions provided for by law, up to and including criminal prosecution, have been taken.

64. In 1994, upon the representations of procurators, 23,800 employees of internal affairs agencies were disciplined for infringements in the examination of statements and reports on offences or in the conduct of investigations or enquiries, and 1,400 persons were prosecuted for various service-related crimes. In cases brought to court, 290 internal affairs agency employees were prosecuted for criminal offences relating to the conduct of investigations and enquiries, 98 of them being tried for use of illegal methods of investigation.

65. In accordance with the provisions of articles 28, 29 and 30 of the Act on the Office of Procurator of the Russian Federation, procurators oversee compliance with the law at places of preliminary detention or deprivation of liberty, during the execution of punishment or other enforcement measures ordered by a court. The directives and requirements of procurators concerning the legally established procedure and conditions under which persons are detained, arrested and sentenced to deprivation of liberty are binding upon the administrative authorities.

66. In exercising continuous supervision over the legality of the execution of criminal sentences, procurators have taken measures to eliminate infringements of the constitutional rights of convicted persons. In 1994 they dealt with over 20,370 complaints regarding issues of compliance with the law in the execution of sentences, including some 2,275 allegations of impermissible measures of influence exerted upon convicts by the authorities responsible for the administration of corrective labour institutions. Infringements of the law were confirmed in 124 cases. During the same period 836 illegally detained persons were released from corrective labour

establishments. It should be noted that in the last few years there has been a steady downward trend in the number of complaints about the conditions of detention of convicted persons.

Article 7

67. According to article 62, paragraph 3, of the Constitution, "Foreign citizens and stateless persons shall enjoy rights and bear obligations in the Russian Federation on an equal footing with citizens of the Russian Federation, except in those cases envisaged by federal law or by an international treaty of the Russian Federation."

68. This principle furthermore applies to such persons at all stages of criminal proceedings, and also to those serving criminal sentences in the form of deprivation of liberty.

Article 8

69. Article 63, paragraph 2, of the Constitution of the Russian Federation reads:

> "In the Russian Federation persons who are persecuted for their political convictions or for actions (or inaction) not recognized as a crime in the Russian Federation may not be extradited to other States. The extradition of persons accused of a crime, as well as the surrender of convicts to serve sentence in other States, shall be carried out on the basis of federal law or an international treaty of the Russian Federation."

70. In accordance with the Convention on the extradition of persons condemned to deprivation of liberty to serve their sentences in the State of which they are citizens, signed in Berlin on 19 May 1978, the practice of extraditing (admitting) convicted persons to serve out their sentences in their home country is widely applied. Exceptionally, in the absence of treaties regulating the procedure for extradition of convicted persons, the Procurators-General of the Contracting Parties personally examine and settle questions of extradition (admittance) of convicted persons with Ukraine, the Republic of Belarus, the Republic of Kazakstan and some other States. Individual treaties on the extradition of convicted persons have been concluded with the Republic of Finland, the Republic of Latvia, the Azerbaijani Republic and Turkmenistan. Similar draft treaties are being prepared with a number of other States.

71. Bilateral treaties concluded by the Russian Federation (or the USSR) with other States and regulating questions of extradition do not generally contain a list of extraditable offences. The range of offences subject to extradition is determined by the punishment that can be imposed by a court for their commission (under the legislation of both contracting parties). Usually this punishment is deprivation of liberty for a period of more than one year or a more severe penalty.

72. The criminal sanctions under the articles of the Criminal Code referred to in the comments on article 4 of the Convention indicate that the offences provided for therein are extraditable offences.

Article 9

73. Judicial assistance to foreign States in criminal cases, including those relating to the acts enumerated in article 4 of the Convention, is provided in accordance with international treaties of the Russian Federation. The same applies to the provision of judicial assistance through Interpol.

74. The Ministry of Internal Affairs of the Russian Federation has concluded a number of interministerial agreements with its counterparts in other States (Azerbaijan, Belarus, Ukraine, Kyrgyzstan, Tajikistan, Kazakstan, Turkmenistan and Latvia). As a rule, the parties undertake to:

search for offenders and persons evading investigation, judgement or the serving of sentence;

exchange information resulting from search and inquiry operations and criminal investigation concerning offences about to be committed and persons involved in them;

detain and arrest persons liable to extradition in connection with offences committed.

Article 10

75. In the opinion of the Russian Federation, one of the requirements for the observance of the Convention in practice is a system for training law enforcement officials, educators and physicians concerned with taking into custody and examining or otherwise dealing with persons subjected to any form of arrest, detention or imprisonment. Topics relating to observance of the law and rules for dealing with persons involved in criminal proceedings are included in the curricula of legal and medical training institutions for staff of law enforcement agencies and personnel of forensic medicine, and psychiatry establishments. Plans for reform and improvement of the penal system, as outlined by the Main Directorate for the Execution of Punishments of the Ministry of Internal Affairs of the Russian Federation, call for the system to be staffed primarily by persons who have undergone special courses in the training establishments of the Ministry of Internal Affairs of the Russian Federation.

76. Rules concerning humane treatment of convicted persons are included in the criminal, criminal-procedure and corrective-labour legislation of the Russian Federation. They are reflected in detail in the departmental orders and instructions of the Procurator-General's Office and the Ministry of Internal Affairs, in decisions of the Supreme Court and in programmes and manuals for training staff of law enforcement agencies. These regulatory provisions and departmental instructions prohibit the commission by officials of the acts specified in article 1 of the Convention. The observance of these rules is under continuous judicial, procuratorial and departmental supervision.

Article 11

77. The further humanization of the corrective-labour legislation is evidenced by the entry into force of the Federal Act referred to earlier concerning the detention of persons suspected or accused of having committed offences. This Act considerably extends the rights and freedoms of suspects and accused persons held in custody (see the comments on art. 6 of the Convention).

Article 12

78. The requirements of article 12 of the Convention are given effect through the provisions of a number of articles of the Code of Criminal Procedure of the Russian Federation. According to article 2 of the Code, the aims of criminal procedure are "speedy and complete detection of offences, conviction of the offenders and correct application of the law so that every person who has committed an offence is justly punished and no innocent person is prosecuted or convicted". According to article 3 of the Code, it is the duty of a court, procurator, investigator or inquiry agency, within the limits of their competence, to institute criminal proceedings whenever indications of an offence are discovered and to take all measures provided for by law to ascertain the occurrence of the offence, identify the offenders and ensure their punishment. According to article 20 of the Code, the aforementioned persons must also "take all measures provided by law for a thorough, complete and objective investigation of the circumstances of the case and identify those circumstances tending either to incriminate or to exonerate the accused, and those mitigating or aggravating his liability". The same article stipulates that it is forbidden "to solicit statements from the accused or other persons involved in a case by force, threats or other illegal means".

Article 13

79. Article 46 of the Constitution of the Russian Federation states that:

> "1. Everyone shall be guaranteed legal protection of his or her rights and freedoms.
>
> "2. Decisions and actions (or inaction) of State government bodies, local government bodies, public organizations and officials may be appealed against in court.
>
> "3. Everyone shall have the right in accordance with international treaties of the Russian Federation to appeal to inter-State bodies for the protection of human rights and freedoms if all available domestic remedies have been exhausted."

80. An Act of the Russian Federation on complaints to a court against actions or decisions infringing citizens' rights and freedoms came into force on 27 April 1993. The Act stipulates that any actions or decisions taken by any State organization or body or by any official without exception may be complained against to a court. In accordance with article 46 of the Constitution and also with the provisions of this Act, complaints may be made to a court against decisions and actions of all law-enforcement agents:

procurators, investigators, inquirers or inquiry agencies, heads of investigation departments or corrective-labour establishments, officials responsible for search operations, foreign intelligence or counter-intelligence, the tax police and the customs service. Until recently complaints against decisions and actions of the aforementioned bodies and officials were made to the procurator's office, which was considered the principal supervisory and control body in the law-enforcement sphere.

81. Article 17, paragraph 7, of the Federal Act on detention of persons suspected or accused of having committed offences entitles suspects and accused persons to submit complaints, including complaints to a court, concerning the legality of and justification for their detention and acts prejudicial to their legal rights and interests, while paragraph 17 of the same article establishes their right to civil treatment by staff of the place of detention.

82. Article 18 of the above Act sets out in detail the procedure for the submission of complaints by suspects or accused persons, as follows:

- Complaints by suspects or accused persons addressed to State government bodies, local government bodies or public organizations are sent through the administration of the place of detention;

- Complaints addressed to a procurator, to a court or to other State government bodies entitled to exercise supervision over places of detention of suspects and accused persons are not subject to censorship and must be sent to the addressee in a sealed packet not later than the next working day after the day on which the proposal, statement or complaint was submitted;

- Complaints addressed to other State government bodies, public organizations or defence counsel must be examined by the administration of the place of detention and sent to the appropriate address not later than three days after their submission;

- Complaints which contain information that might hinder the establishment of the truth in a criminal case or aid the commission of an offence, which are written in a cryptogram or code or contain State or other legally protected secrets, are not forwarded to the addressee but transmitted to the person or body in charge of the criminal proceedings;

- Complaints against actions or decisions of a court, a person conducting an inquiry, an investigator or a procurator are forwarded in the manner provided for in the Code of Criminal Procedure of the Russian Federation not later than three days from the time of their submission;

- Replies to complaints are communicated to suspects and accused persons against signature and are added to their personal files.

83. The above article of the Act also prohibits any kind of persecution of suspects or accused persons for complaining about infringements of their rights and lawful interests. Officials of detention centres guilty of such persecution bear responsibility under the law.

Article 14

84. Article 52 of the Constitution of the Russian Federation states that:

> "The rights of victims of crimes and of abuses of office shall be protected by law. The State shall provide the victims with access to justice and compensation for damage sustained."

85. Article 53 of the Constitution provides that "everyone shall have the right to State compensation for damage caused by unlawful actions (or inaction) of State government bodies or their officials."

86. The conditions and procedure for awarding compensation for damage caused by improper actions of officials, inquiry or preliminary investigation agencies, a procurator's office or a court are laid down in the decree of the Presidium of the Supreme Soviet of the USSR dated 18 May 1981, regarding compensation for damage caused to a citizen by unlawful actions of State or public organizations or officials in the discharge of their duties, in the regulations approved by that decree concerning compensation for damage caused to a citizen by unlawful actions of inquiry and preliminary investigation agencies or of a court and the instruction dated 2 March 1991 on the implementation of those regulations. These instruments establish the following rules:

- Compensation is payable for damage caused by unlawful criminal prosecution, unlawful detention or unlawful administrative sanction in the form of arrest or corrective labour;

- The damage is indemnified by the State through its appropriate bodies;

- In addition to compensation for property loss, the victim's employment, pension and housing rights are restored and compensation is also paid for other property and non-property damage.

87. In accordance with the Act of the Russian Federation on the Rehabilitation of victims of political repression, the Government of the Russian Federation adopted on 3 May 1994 regulations concerning the procedure for granting privileges to rehabilitated persons recognized as having undergone political repression. Under these regulations such persons are entitled to:

- Special medical care, provision of medicaments and sanatorium or spa treatment;

- Priority housing, free travel and other privileges.

88. Under the provisions of article 1 of the above Act, political repression is defined as "various measures of coercion which were employed by the State for political reasons, in the form of deprivation of life or liberty, placement for forcible treatment in psychiatric institutions, expulsion from the country and deprivation of citizenship, eviction of population groups from their places of residence, exile, banishment or assignment to special residence, subjection to forced labour with restriction of freedom or any other deprivation or restriction of the rights and freedoms of persons declared socially dangerous to the State or the political system on class, social, national, religious or other grounds, and which were carried out by decision of the courts and other bodies vested with judicial functions, or administratively by agencies of the executive or by officials or public organizations or their agencies vested with administrative powers.

89. Apart from persons directly subjected to repression during the years of Soviet rule, victims of political repression under the terms of article 2.1 of the Act are also deemed to include:

- Children who were with their parents in places of confinement, exile, banishment or special residence;

- Children left as minors without the care of one or both of their parents, who were unjustly repressed on political grounds;

- Children, spouses and parents of persons who were shot or died in places of confinement and who were rehabilitated posthumously.

90. Article 15 of the Act contains special provisions for pecuniary compensation of victims.

91. On 11 October 1995 the State Duma approved a bill amending and supplementing the Act of the Russian Federation on rehabilitation of victims of political repression, under which it is proposed to recognize as having undergone political repression and as subject to rehabilitation children who were with their parents in places of confinement, exile, banishment, or special residence.

92. Unfortunately, the economic and financial difficulties that the Russian Federation is experiencing at the present stage do not always allow this Act, which is of the very greatest importance for the country, to be implemented in full. Nevertheless, the Government of the Russian Federation will continue to bend all its efforts to fully implementing the array of measures for the rehabilitation of victims as provided for in the Act on rehabilitation of victims of political repression and the regulatory measures adopted in pursuance of that Act.

Article 15

93. Article 20, paragraph 3, of the Code of Criminal Procedure of the Russian Federation categorically prohibits soliciting statements from the accused or other persons involved in a case by force, threats or other illegal means.

94. This wording deprives such statements of any value whatsoever as evidence, except when used against a person accused of having committed the unlawful acts referred to above.

95. Furthermore, article 171 of the Criminal Code of the Russian Federation establishes a rather severe penalty (deprivation of liberty for 3 to 10 years) for coercion to give evidence by means of threats or other illegal actions by the person conducting an inquiry or preliminary investigation, where such actions are combined with the use of force or personal humiliation of the person interrogated.

96. The above actions are characterized in the legislation on criminal procedure of the Russian Federation as material breaches of criminal procedure law and constitute grounds for vacating or changing a judgement in the consideration of a case on appeal (art. 342 of the Code of Criminal Procedure of the Russian Federation).

Article 16

97. As mentioned above, article 21, paragraph 2, of the Constitution of the Russian Federation contains a general rule prohibiting the subjection of a person to torture, violence or other cruel or degrading treatment or punishment. The same article stipulates that "no one may be subjected to medical, scientific or other experiments without voluntary consent".

98. Some of the ideas set forth in article 21 of the Constitution are contained in the Correctional Labour Code of the Russian Federation, where it is stressed that the purpose of punishment is not to cause suffering to convicted persons or to diminish their human dignity (art. 1, para. 2); they retain the general legal status of citizens, subject to some necessary exceptions (art. 8), and are accorded the right to personal safety (art. 82); cruel, inhuman or humiliating actions by staff are categorically prohibited (art. 116).

99. The Russian Federation recognizes the Code of Conduct for Law Enforcement Officials, which requires, on the part of such officials, humane treatment of persons in detention or under arrest, protection of every person's dignity and use of force only when strictly necessary, or when other methods cannot avail to prevent crime, and categorically prohibits the use of torture and other cruel or inhuman treatment or punishment (arts. 2, 3 and 5).

100. Enforced medical, scientific or other experiments upon people are a form of violence or cruelty (art. 21, para. 2, of the Constitution). However, such experiments are also inadmissible when the subjects do not know they are taking place. Whether such experiments present a threat to peoples' life and health or whether, in the experimenters' opinion, they are safe is irrelevant. For any experiment to be conducted upon a human being, his or her voluntary (not forced) consent is needed. If the experiment is dangerous to life and health, it may not be conducted even with such consent. This follows from a number of articles of the Fundamental Principles of Legislation of the Russian Federation concerning the protection of citizens' health. Article 6, paragraph 12, stipulates that authorization must be given for the utilization of new methods of prevention, diagnosis or treatment and for new medical

technologies (such authorization is based on reliable data showing that the new methods are safe or that their usefulness outweighs their risks); the third paragraph of article 43 permits the utilization with the patient's written consent of new methods, even if not authorized, provided that they are "under consideration following the established procedure", which means that the method has already undergone preliminary testing; the fifth paragraph of article 43 provides that the conduct of biomedical research "must be based on preliminary laboratory experimentation"; and the eighth paragraph of article 43 reads: "Promotion ... of preventive, diagnostic or treatment methods, or medicines that have not undergone testing in accordance with the law shall be prohibited".

101. The Act of the Russian Federation on psychiatric care and safeguards of citizens' rights during such care, which came into force on 1 January 1993, contains a number of provisions confirming the Russian Federation's commitment to the norms of international law in this sphere. Thus the preamble to the Act states, in particular, that one of its aims is to prevent "the use of psychiatry for non-medical purposes", which might be "detrimental to the health, human dignity and rights of citizens".

102. In article 5 of the Act of the Russian Federation on the rights of persons suffering from psychic disorders it is stated, inter alia, that such persons have the right to "a respectful and humane treatment precluding any injury to their human dignity"; "psychiatric care under conditions of minimum constraint"; "maintenance in an in-patient psychiatric facility only for as long as necessary for observation and treatment"; "provision of psychiatric care under conditions conforming to health requirements"; "prior agreement, or refusal at any stage, to be used as a subject for testing drugs or medical techniques, for scientific research or teaching, or to be photographed, videoed or filmed"; and "the assistance of a lawyer, legal representative or other person under the procedure established by law". In the same article it is laid down that officials guilty of infringing these rights "incur responsibility in accordance with the legislation of the Russian Federation and its constituent republics".

103. Article 10 sets out in particular the rules for utilizing drugs and medical techniques, stating expressly that they may be employed "only for diagnostic and treatment purposes, according to the nature of the morbid condition, and must not be used to punish persons suffering from psychiatric disorders or in the interests of other persons".

104. Strict regulations also govern the utilization in psychiatry of measures of physical restraint and isolation, which are permitted "only in the forms and for the length of time required in cases where ... it is not possible by other methods to prevent actions by a hospitalized person which constitute a direct danger to him or to other persons, and they must be carried out under the continuous supervision of medical personnel".

105. The Psychiatric Care Act has provided legislative endorsement of the reorganization carried out in 1988 in connection with the transfer to the authority of the public health agencies of all enforcement measures of a medical character applied by the courts to persons with psychiatric disorders

who have committed dangerous actions covered by the criminal law. Until 1988 the special psychiatric hospitals for persons constituting a particular threat to society were under the authority of the Ministry of Internal Affairs, a situation that resulted in unwarranted restriction of the freedom of patients, and infringement of their rights and legitimate interests. Article 10 of the Act lays down that all "enforcement measures of a medical character shall be carried out in the psychiatric institutions of the public health authorities" and that persons to whom they are applied enjoy the same rights as other citizens in in-patient psychiatric facilities (art. 37 of the Act).

106. It should be added that since 1988 the Criminal Code in force in the Russian Federation has contained an article 126 providing for criminal responsibility in case of "illegal placement in a psychiatric hospital". A similar article is to be included in the new draft Criminal Code currently in preparation.

107. Efforts to humanize psychiatric care and to eliminate cruel or degrading treatment of patients during such care are being undertaken not only by the legislative bodies but also by public associations of psychiatrists. In 1994 the Board of the Russian Association of Psychiatrists in plenary session adopted the Psychiatrist's Code of Professional Ethics, a number of provisions of which reflect the aims and principles of the Convention. One of the sections of article 4 of this Code in particular states: "A psychiatrist shall not be entitled to employ medical techniques or drugs in order to punish a patient, or for the convenience of staff or other persons, or to take part in the torture, abuse or other forms of cruel or inhuman treatment of people". Article 5 reads: "It is the moral duty of a psychiatrist to respect the freedom and independence of the patient as a person and his honour and dignity, and to be concerned about safeguarding his rights and legitimate interests". Particular stress is laid in the Code of Professional Ethics on the inadmissibility of any violation of the principles of the Convention in the conduct of scientific research or clinical testing of new medical techniques or drugs. Article 9, which deals with these matters, emphasizes that a psychiatric researcher "must be guided by the principle that the good of the patient takes precedence over public advantage or scientific interests", and that the refusal of a patient to take part in a research programme "must not in any degree negatively influence behaviour towards the patient or the provision to him of psychiatric care". With a view to supervising the observance of these provisions, ethical committees have now been or are being established in psychiatric institutions engaging in activities of this kind.

108. It should be noted that in the Statutes of the Russian Association of Psychiatrists (a public professional organization of wide membership) the observance of the rules of the Psychiatrist's Code of Professional Ethics is described as one of the obligations of its members. For infringement of those rules the Statutes provide for sanctions that may extend to exclusion from membership of the Association.

109. Some provisions of the Convention, and also the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other

cruel, inhuman or degrading treatment or punishment (General Assembly resolution 37/194 of 18 December 1982) have been included, on the initiative of the V.P. Serbsky State Centre for Research in Social and Forensic Psychiatry, in the draft law of the Russian Federation on expert examinations currently being prepared. These relate in particular to disallowing the participation of psychiatric experts in the interrogation of prisoners and detainees (Principle 4a) and to strict regulation of the activities of experts and their independence from the body that has ordered an examination by a forensic psychiatrist.